

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JUDITH FONSECA

v.

C.A. NO: 04-11870 ~~04-11870~~ JLA

MAXI DRUG, INC. d/b/a
BROOKS PHARMACY

ANSWER TO AMENDED COMPLAINT

JURISDICTION

Plaintiff's allegations regarding jurisdiction are denied.

COUNT I

AS AGAINST MAXI DRUG, INC. d/b/a BROOKS PHARMACY IN WARRANTY

1. Defendant, Maxi Drug, Inc. d/b/a Brooks Pharmacy is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph of Plaintiff's Complaint and leaves Plaintiff to her proof.

2. Admitted.
3. Denied.
4. Denied.
5. Denied.
6. Denied.

WHEREFORE, Defendant, Maxi Drug, Inc. d/b/a Brooks Pharmacy, demands judgment in its favor and that Plaintiff's Complaint be denied and dismissed, plus costs.

COUNT II

AS AGAINST MAXI DRUG, INC., d/b/a BROOKS PHARMACY IN NEGLIGENCE

1. Defendants, Maxi Drug, Inc. d/b/a Brooks Pharmacy is without sufficient knowledge to form a belief as to the truth of the allegations of this paragraph of Plaintiff's Complaint and leaves Plaintiff to her proof.

2. Admitted.
3. Denied.
4. Denied.
5. Denied.
6. Denied.

7. Denied.
8. Denied.
9. Denied.

WHEREFORE, Defendant, Maxi Drug, Inc., d/b/a Brooks Pharmacy, demands judgment in its favor and that Plaintiff's Complaint be denied and dismissed, plus costs.

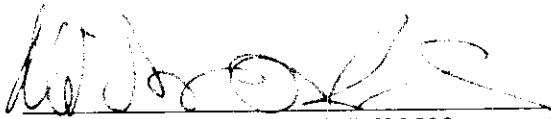
AFFIRMATIVE DEFENSES

1. This Court lacks jurisdiction over the parties.
2. This Court lacks diversity jurisdiction over the parties because the amount in controversy does not exceed \$75,000.00.
3. Plaintiff's Complaint is barred by the applicable statute of limitation.
4. Plaintiff's injuries or damages, if any, were caused by Plaintiff's comparative negligence which exceeds the negligence, if any, of this Defendant.
5. Plaintiff assumed the risk of her injuries.
6. Plaintiff's Complaint fails to state a claim upon which relief may be granted against Defendant Maxi Drug, Inc., d/b/a Brooks Pharmacy, Inc.

DEFENDANT MAXI DRUG, INC., d/b/a BROOKS PHARMACY, DEMANDS TRIAL BY JURY.

MICHAEL R. DE LUCA, B.B.O. NO. 639509, IS DESIGNATED AS TRIAL COUNSEL.

Defendant, Maxi Drug, Inc. d/b/a
Brooks Pharmacy
By its Attorneys:

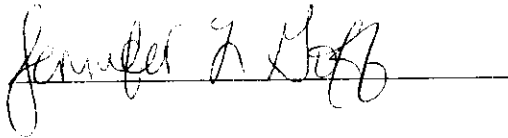


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CERTIFICATION

John M. Sahady, Esq.
Sahady Associates, PC
399 North Main Street
Fall River, MA 02720

I hereby certify that a true copy of the within was served by mail upon counsel of record, as above, on the 2nd day of May, 2005.

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